

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Canada Post Corporation – United States Postal
Service Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-5

ORDER CONCERNING AMENDMENT
TO BILATERAL AGREEMENT WITH CANADA POST
NEGOTIATED SERVICE AGREEMENT

(Issued January 7, 2013)

I. INTRODUCTION

The Postal Service filed notice of a modification to an existing bilateral agreement with Canada Post Corporation (Modified Agreement),¹ which is within the existing Inbound Market Dominant Multi-Service Agreements with Foreign Postal

¹ Notice of United States Postal Service of Amendment to Agreement, November 29, 2012 (Notice). On December 17, 2012, after review and consultation with the Public Representative and officials from Canada Post, the Postal Service filed a revised attachment providing greater transparency of the amendment to the bilateral agreement. Notice of United States Postal Service of Substitution of Attachment, December 17, 2012.

Operators 1 product. The Postal Service asks the Commission to “take note of the amendment” and the accompanying financial models “indicating that the agreement continues to comport with the requirements of 39 U.S.C. § 3622(c).” Notice at 3. The Commission construes the Postal Service’s filing as also requesting that the Modified Agreement continue to be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. For the reasons discussed below, the Commission approves the Postal Service’s request.

II. BACKGROUND

The Commission approved the inclusion of the existing Canada Post Agreement (Agreement) within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product in 2011, following consideration in Docket No. R2012-5.² The Agreement, which established negotiated rates for inbound Letter Post, committed both parties to certain marketing and product development initiatives. Notice at 2. The amendment, identified as Attachment 8 to the Agreement, is the result of one of those initiatives. *Id.* It establishes terms and conditions for the exchange of Express items between the Postal Service and Canada Post Corporation. The expected launch date for this offering is January 14, 2013. *Id.* at 1.

In Order No. 1568, the Commission provided notice of the filing, provided interested persons an opportunity to comment, and appointed a Public Representative.³

III. POSTAL SERVICE FILING

The Postal Service filed supporting materials, including a redacted and unredacted copy of the amendment, redacted and unredacted financial workpapers, and an application for non-public treatment of materials filed under seal. Notice at 1-2.

² Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, December 27, 2011 (Order No. 1078).

³ Order No. 1568, Notice and Order on Limited Reopening of Docket to Address Postal Service Notice Concerning Anticipated Product Launch Date, December 6, 2012.

IV. COMMENTS

The Public Representative filed comments in response to Commission Order No. 1568.⁴ No other interested person submitted comments. The Public Representative maintains that the Modified Agreement continues to comport with the requirements of 39 U.S.C. § 3622(c)(10). PR Comments at 3.

V. COMMISSION ANALYSIS

In Order No. 1078, the Commission approved the inclusion of the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. In the instant proceeding, the Postal Service seeks to amend the Canada Post Agreement.

The Modified Agreement includes terms and conditions for the exchange of *Exprès* items. As this offering qualifies as Letter Post, a category previously determined by the Commission to be market dominant, there is no need to revisit whether the Modified Agreement should be classified as market dominant. Similarly, given that *Exprès* items qualify as Letter Post, the previous finding of functional equivalence is applicable to the Modified Agreement. See Order No. 1078 at 7-8.

The statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 CFR 3010.40(a) are applicable to the Modified Agreement and require the Commission to make a finding that the Modified Agreement must either (1) improve the net financial position of the Postal Service (39 U.S.C. § 3622(c)(10)(A)(i)); or (2) enhance the performance of various operational functions (39 U.S.C. § 3622(c)(10)(A)(ii)). Additionally, the negotiated service agreement may not “cause unreasonable harm to the marketplace” (39 U.S.C. § 3622(c)(10)(B)) and “must be available on public and reasonable terms to similarly situated mailers.” 39 CFR 3010.40(c).

⁴ Public Representative Comments on Postal Service Notice of an Amendment to Bilateral Agreement with Canada Post Concerning Anticipated Product Launch Date, December 17, 2012 (PR Comments).

In Order No. 1078, the Commission found that the Agreement was consistent with section 3622(c)(10). *Id.* at 7. The Modified Agreement amends the Agreement by adding *Exprès* service. Based on its review of the financial model, the Commission finds that the Modified Agreement will improve the net financial position of the Postal Service and therefore complies with section 3622(c)(10). See *also* PR Comments at 3.

If the Modified Agreement terminates earlier than the proposed term, the Postal Service shall notify the Commission and file relevant contract data as set forth in the body of this Order.

Within 30 days of expiration, or upon early termination of the Agreement, as modified herein, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

It is ordered:

1. The Modified Agreement is included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Operators 1) product.
2. If the Modified Agreement terminates earlier than the proposed term, the Postal Service shall notify the Commission and file relevant contract data as set forth in the body of this Order.
3. Within 30 days of expiration, or upon early termination of the Agreement, as modified herein, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

By the Commission.

Shoshana M. Grove
Secretary